DOCUMENT RESUME

ED 029 389 EA 002 245

By-Stover, Kermit M.

School Board Attorney: Friend in Need.

Pub Date 15 Apr 69

Note-19p.; Paper presented at the Annual Meeting of the National Sch. Boards Assn. (29th, Miami Beach, Florida, April 15, 1969)

EDRS Price MF-$0.25 HC-$1.05

Descriptors-Administrative Personnel, *Boards of Education, Bond Issues, Court Litigation, Educational Legislation, Freedom of Speech, *Lawyers, Legal Costs, *Legal Problems, *School Administration, *School Law, School Policy, Student School Relationship

Identifiers-Pennsylvania

To keep abreast of newly enacted legislation and court opinions affecting school policies and regulation, school officials need prompt, competent, and reliable legal advice, and should be prepared to pay for it. By consulting a competent attorney, school officials can avoid unnecessary and costly delays resulting from litigation over procedural matters (e.g., bids, contracts, bond issues, and debt limit) and from Constitutional issues (e.g., various rules and regulations affecting the civil liberties of students and teachers). Informed legal advice should be available to school board members and district superintendents and administrators for use in all decisions having a potential for legal entanglement. (JH)

ED027707

SCHOOL BOARD ATTORNEY: FRIEND IN NEED

National School Boards Convention - April 15, 1969

Dr. Kermit M. Stover
Superintendent of Schools
Marple Newtown School District
120 Media Line Road
Newtown Square, Pennsylvania

U.S. DEPARTMENT OF HEALTH, EDUCATION & WELFARE
OFFICE OF EDUCATION

THIS DOCUMENT HAS BEEN REPRODUCED EXACTLY AS RECEIVED FROM THE PERSON OR ORGANIZATION ORIGINATING IT. POINTS OF VIEW OR OPINIONS STATED DO NOT NECESSARILY REPRESENT OFFICIAL OFFICE OF EDUCATION POSITION OR POLICY.

EA 002 245

SCHOOL BOARD ATTORNEY: FRIEND IN NEED

National School Boards Convention - April 15, 1969

School attorney, Friend in Need, is a topic not unfamiliar to past and present discussions and deliberations of school officials at educational conferences, conventions, and meetings. Differences of opinion concerning the value and role of the school attorney have been expressed by both Board members and administrators. Questions have been raised concerning the need of school attorneys for all districts, the competency of attorneys on the subject of school law, the role of the attorney in molding the educational program and the determination of school policies, and the need for providing legal services for all school officials within the school system. Questions developing as a result of the maze of educational legislation in the Congress as well as the states; the school decisions of numerous court cases, including federal, state and local; and the numerous opinions on educational matters rendered by attorneys, too, indicate the importance and the need for school attorneys.

School district reorganization, the construction of school buildings, and the development of an expanding area of services within the school program present school boards and school authorities with problems requiring legal assistance for solution. Answers to many such questions relating to legal services have been lacking due to the limited amount of research available on the role of the school attorney in school

administration and school board functions. Answers, too, are needed to cope with the increasing number of issues vital to the operation of schools which are constantly being tested in the courts. Certainly, additional research and study on the role and function of the school attorney is needed in order to guarantee adequate legal services for the efficient operation of our educational program.

Today, more than at any time in our past, the problems besetting schools everywhere demand the services of the school attorney as a friend of the school district and the educational program.

For the purpose of discussing this topic I wish to present some background information on the role of the school attorney, the need for the school attorney to counsel school boards in the transaction of school board business, and the extreme importance for the school attorney to counsel members of the administrative staff of a school system.

In 1960 I completed research on the services and influence of the school attorney in the Public Schools of Pennsylvania. My findings at that time portrayed an increasing and constant need on the part of Pennsylvania's school officials for legal counsel and services. My chief finding confirmed the need of legal counsel for the orderly development of an educational program for a growing population, to assist school boards and boards of Authorities to operate legally, for the protection of liability of school officials from illegal actions, and for technical advice to the superintendent on all matters of law.

The services of competent school solicitors are essential for the formation of jointly operated school systems, union and merged school districts, and school Authorities on a sound legal basis. Solicitors (the term used by Pennsylvania, the only State which designates the school attorney as Solicitor by school law), attorneys, and special counselors are needed to guide procedure in financing school buildings through Authority and general obligation bond sales. Legal representation of school or Authority boards is essential to secure court decisions on the interpretation of the law and for the protection of the legal rights of the boards in providing an educational system to meet the needs of the community. The method and manner in which these needs are met influence education in no small measure.

The solicitor who is competent, well versed in current school law, able to test the implied powers of school boards for needed innovations, and consistent in the interpretation of school laws exerts a very definite influence on the overall educational program.

One legal error on the part of the solicitor may delay the construction of a needed building for several years or perhaps a decade. An error in the interpretation of the law may deprive a generation of the advantages of a county technical school. Lack of a reasonable degree of uniformity in the interpretation of the school law by solicitors throughout the state may result in gross inequality of educational opportunities throughout the state.

In some instances, the influence of the solicitor extends beyond legal matters affecting education. In such situations, the solicitor assumes the role of solicitor and educator.

With the exception of few instances, however, I found at that time the solicitor had little influence on the administration of the educational program of the schools.

Legal services for Pennsylvania public schools are provided on several different levels. School boards of individual districts or of jointly operated school systems have the power by statute to appoint a solicitor; county boards of school directors may appoint an attorney; and Authorities used for school purposes may employ an attorney. Special counsel is usually employed by school boards and by Authorities to assist the local solicitor with the legal aspects involved in the sale of bonds to finance school buildings.

Most Pennsylvania school boards, having a chief school administrator, employ a school solicitor although they spend comparatively small amounts of money for the service. Ten years ago the median compensation of solicitors in Pennsylvania was less than $350. Today, however, the cost of legal service for school districts of my county, Delaware County, Pennsylvania, ranges from a low of $600 per annum, to a high of $16,500 per annum. The median expended is $3,000 per district. Most school administrators were of the opinion, however, that the value of the services of the solicitor is equal to or greater than the compensation paid and that the salary of the solicitor should be increased.

Payment to school treasurers of school boards in Pennsylvania was approximately 40 per cent greater than that paid for legal services in the majority of the school districts. It is my observation that the school attorney today occupies a higher degree priority on the administrative payroll than that practiced ten years ago.

Solicitors are usually employed by two or more municipal organizations as their attorney or solicitor, are responsible to the board and superintendent jointly, attend all board meetings, and are paid a fixed salary. In a number of situations, however, the services of the school solicitor were not available to the superintendent.

The most common services of solicitors to school boards reported were the giving of legal advice, the interpretation of the school code, the preparation of special resolutions, and written opinions, the sale of bond issues, and litigation.

Respondents favored adequate knowledge of school law, special training in school legal procedures, and admission to the Bar of a Court of Record as qualifications for solicitor.

Lack of uniformity relating to the interpretation of school law was reported within counties and within the Commonwealth as a whole. Although solicitors believed that the situation was impossible to correct, respondents agreed that in-service training for school attorneys and the establishment of a strong legal division in the Department of Public Instruction to advise and inform school attorneys on legal matters would result in greater uniformity of interpretation and practices.

Most frequent suggestions for improving the role of the school attorney included workshops or conferences, a state association, and a strong legal division in the Department of Public Instruction.

Adequate compensation and availability of the attorney to all districts of the county were suggested as methods of improving the role of the county board attorney.

In most instances the attorney for the Authority was the attorney of the related school district. He is usually paid a fixed salary or retainer for his services. The median compensation reported was approximately $600 per annum. In addition to this compensation, he receives fees almost equal to those of special bond counsel for school building projects financed by Authority bond sales. Special bond counsel fees for Authority school building projects range from $3,651 to $9,029 while bond counsel fees for those same projects ranged from $2,897 to $8,945.

Several recommendations of the study have been implemented since the completion of my study including the organization of the State Association of School Attorneys as a department of the Pennsylvania State School Boards Association and known as the Pennsylvania School Board Solicitors Association. This organization has implemented a second recommendation which provides services for the exchange of School Law information to solicitors, school boards and administrators of our Commonwealth.

This service has been an invaluable aid during the past six years in providing written decisions on school matters of local, state and federal

courts as well as the written opinions of local solicitors on pertinent subjects to the school officials of our state.

Other recommendations which have been implemented to a substantial degree during past years through local initiative are the following:

- The school solicitor be jointly responsible to the school administrator and the school board and that he serve as a consultant to both superintendent and school board as a member of the superintendent's staff.
- The school solicitor be in attendance at all meetings of the board to advise and counsel on all matters pertaining to the law.
- Schools of Education in cooperation with law schools offer courses in school law for attorneys during summer sessions, in extension centers, or in correspondence.
- The Department of Public Instruction in conjunction with the Department of Justice provides a full-time legal expert in the field of school law as Deputy Attorney General to counsel school solicitors and other school officials on school law. This office should serve as a clearing house to school solicitors and other school officials for the publication and distribution of the latest decisions, rulings, and legislation on school matters. It should also collect, compile, publish, and distribute written opinions of school solicitors on a state wide basis.

- Study councils and universities sponsor annual workshops, seminars, or conferences for in-service training of school solicitors on current school legislation and court decisions.
- Adequate compensation be paid to qualified or certified school solicitors.
- School boards adopt written policies concerning the compensation of solicitors, their duties, their function, and their status with the chief school administrator and the school board.
- School boards require the solicitor to submit in writing opinions on important and controversial issues.
- School administrators should secure adequate training in school law but should consider the role of the school solicitor in the field of school law in the same way that the administrator considers the role of the architect in the field of school buildings.

Among other recommendations which have not been implemented to a great degree and which in my opinion should receive the attention of school officials, are the following:

1. Legislation be enacted to provide for the certification of school solicitors by the Department of Public Instruction. No person be permitted to serve as a school solicitor until he is properly certified for the position. Qualifications for certification include membership to the Bar of a Court of Record and to the Supreme Court, three years of successful experience

as an attorney, and the completion of an accredited course in school law.

2. All administrative units having chief school administrators be required by law to employ a certificated school solicitor. The county school solicitor be required to provide all the services of the office of solicitor to administrative units not having a chief school administrator.

3. Legislation be enacted to define the general duties and functions of the solicitor.

4. The school solicitor of the administrative area be the attorney of the Authority used to finance its school building projects.

5. For consistency, legislation designate the attorney to the county board of school directors as the County School Solicitor. He should be certified by the Department of Public Instruction on the basis of not less than three years experience as a school solicitor of a local district. In addition to his duties as solicitor for the county organization, he perform the functions of solicitor for all districts and boards not having a chief school administrator and be available for legal advice on the part of any administrative unit or school official of the county. The County School Solicitor should be a member of the technical staff of the office of the county school superintendent and should be jointly responsible to the county superintendent and to the county board of school directors.

6. Additional research be made on the subjects: "The Content and nature of written opinions of school solicitors and their effect on education", "The responsibility of the solicitor in influencing educational legislation," "Comparison of quality of education and school systems in districts with and without school solicitors," and "The influence on education and the work of the legal division of the Department of Public Instruction."

This background information sets the stage for the discussion of two additional phases of the school attorney as a friend to both the school board and its staff. It is probably unnecessary to repeat that the attorney is a friend school boards need, since most boards presently retain the services of an attorney. It is needed, however, for the relatively few Boards who attempt to operate without such services and for many others who may not have attorneys competent in school law. Competency in school law is becoming an increasingly important and necessary asset for any attorney aspiring to provide a school board with legal counsel when one considers the diversification of legal topics demanding his attention. During the past year, 1968, in Pennsylvania, the following topics were reported in the School Law Information Exchange, as an example:

- Teachers' Strike in Scranton - Solicitor's Opinion, Formalizing Informal Negotiations with Teacher Group, Salary Policy & Schedule.
- County Court devises plan for mandatory check-off

- Assistant Attorney General Requesting Review of Solicitor Salary Deductiam for Social Security purposes.
- County Court upholds School Boards Dismissal of Professional Employee.
- Solicitor's opinion for Action Day which involved request of Teachers to Close School to Visit the Legislature.
- Supreme Court Affirms School Districts Right to Apply its Realty Transfer Tax to Transfers Occurring Upon Dissolution of a Corporation.
- Applications of the "One-Man One-Role" Rule to Units of Local Government - opinion of Supreme Court
- School Board Solicitor's opinions on:
    - What School Employees are Entitled to Sabbatical Leave
    - When may Sabbatical Leave be Granted
    - Right of Citizen to Withhold his Social Security Number From School Census Taker
    - Non-sectarian use of Property
- County Court rules on transportation of non-public school pupils over routes other than established public school routes.
- County Court upholds right of a School Board to suspend students for reasons of pregnancy.
- County Court Rules Vacation pay is subject to local income tax.
- Solicitors opinion concerning administrators personal membership in Professional Organizations

- County Court rules teacher was improperly dismissed
- County Court rules on "Haircut" issue.

These plus twenty six other matters were reported on School Law Exchange service during one single year, 1968.

It is quite evident that school litigation is on the increase and school boards are subject to increased legal entanglements, particularly without the services of qualified and competent school attorney assisting the board in its deliberations at executive and official meetings of the Board. Competent legal advisors are needed for guidance in school board action on practically all matters including the following:

1. General duties and powers of the School Board, including the development of reasonable rules and regulations
2. Interpretation and application of thousands of school laws relating to the federal and state constitutions, acts of Congress and State Legislatures, rules and regulations of State Councils or Departments of Education, and Decisions Rendered by Local, State and Federal Courts.
3. Legality and format of bids, contracts, agreements, bond issues, taxes, debt limits, use of school funds, and other similar areas of school concern.

School Boards face questions concerning relationship with non-public schools, personal welfare issues, academic freedom, oaths of allegiance, the reading of the Bible, the right of free speech, personal liability of

employees or Board members, liability as a result of injuries of students on school trips, safety patrols or corporal punishment, liability for hazards on grounds or in buildings, religious freedom, admission policies, rules of conduct, curriculum problems, use of school property, and general school board procedures.

School Boards who attempt to depend upon themselves or their own membership in lieu of the services of a competent school attorney invite the risk of constant litigation and the accompanying unnecessary and costly delays in meeting educational needs and commitments. An ounce of prevention through the use of your school attorney as a friend is equal to a pound of cure in the courts and the corrective measures within the school system as a result of the application of a legal decision.

The most important current need relative to school legal services for the welfare of the educational programs and the protection of School Board, however, is the on-call availability of the employed school attorney to the Chief School Administrator and his staff. It is not only a current need, but one that seems to be growing in magnitude each year. No longer are decisions, regulations, and policies enacted by school boards, administrators, or staff members readily accepted as final by pupils, parents, tax payers, or employees. Such policies are constantly under attack from the standpoint of their constitutionality or legality. Decisions of school officials, such as occurred in my school district concerning the location of a site for a new elementary school and the procedure for securing zoning approval from the local municipal government, are carried by tax payers to the State Supreme Court for an opinion.

Issues relating to individual rights of pupils in the classroom or in the school, such as hair cuts, dress, suspensions, religious observances, flag salute, the wearing of insignias, demonstrations, the underground press, and others are being contested by individuals and organizations. Principals and Superintendents need constant legal advice for the development and implementation of such regulations which jointly sustain individual rights and the welfare of the school without a great amount of risk for litigation.

Board and administrators will constantly need to be assured that their policies and regulations are in accord with the basic principles of our democratic system of government and our constitution. Just recently the United States Supreme Court upheld the right of high school students to political dissent as long as it was not disruptive to the everyday life of the school. This decision as reviewed in the School Law Information Service of the Pennsylvania School Boards Association upheld the right of students to wear symbols such as "the wearing on their sleeve a band of black cloth to exhibit their disapproval of the Vietnam hostilities and their advocacy of a truce, to make their views known, and by their example, to influence others to adopt them". He further stated that this action caused discussion outside of the classroom, but no interference with work and no disorder as such. The Constitution does not permit State officials to deny this form of expression. In a minority report of the decision, however, Mr. Justice Stewart, although agreeing with much of the Court's opinion stated "I can not share the Court's uncritical assumption that, school discipline aside, the First Amendment rights of children are co-extensive with those of adults."

Mr. Justice Black in dissenting with the court's opinion has this to say:

> The Court's holding in this case ushers in what I deem to be an entirely new era in which the power to control pupils by the elected "officials of state supported public schools.." in the United States is in ultimate effect transferred to the Supreme Court. The Court brought this particular case here on a petition for certiorari urging that the First and Fourteenth Amendments protect the right of school pupils to express their political views all the way "from kindergarten through high school." Here the constitutional right to "political expression" asserted was a right to wear black armbands during school hours and at classes in order to demonstrate to the other students that the petitioners were mourning because of the death of United States' soldiers in Vietnam and to protest that war which they were against. Ordered to refrain from wearing the armbands in school by the elected school officials and the teachers vested with state authority to do so, apparently only seven out of the school system's 18,000 pupils deliberately refused to obey the order. One defying pupil was Paul Tinker, 8 years old, who was in the second grade; another Hope Tinker was 11 years old in the fifth grade; a third member of the Tinker family was 13, in the eighth grade; and a fourth member of the same family was John Tinker, 15 years old, an 11th grade high school pupil. Their father, a Methodist minister without a church, is paid a salary by the American Friends Service Committee. Another student who defied the school order and insisted on wearing an armband in school was Chris Eckhardt, an 11th grade pupil and a petitioner in this case. His mother is an official in the Women's International League for Peace and Freedom.

As I read the Court's opinion it relies upon the following grounds for holding unconstitutional the judgment of the Des Moines school officials and the two Courts below..First the Court concludes that the wearing of armbands is "symbolic speech" which is "akin to pure speech" and therefore protected by the First and Fourteenth Amendments. Secondly, the Court decides that the public schools are an appropriate place to exercise "symbolic speech" as long as normal school functions are not "unreasonably" disrupted. Finally, the Court arrogates to itself, rather than to the State's elected officials charged with running the schools, the decision as to which school disciplinary regulations are "reasonable".

Assuming that the Court is correct in holding that the conduct of wearing armbands for the purpose of conveying political ideas is protected by the First Amendment compare, e.g., Giboney v. Empire Storage & Ice Co., 336 U.S. 490 (1949), the crucial remaining questions are whether students and teachers may use the schools at their whim as a

platform for the exercise of free speech - "symbolic" or "pure" - and whether the Courts will allocate to themselves the function of deciding how the pupils school day will be spent. While I have always believed that under the First and Fourteenth Amendments neither the State nor Federal Government has any authority to regulate or censor the content of speech, I have never believed that any person has a right to give speeches or engage in demonstrations where he pleases and when he pleases."....."Change has been said to be truly the law of life but sometimes the old and the tried and true are worth holding. The schools of this Nation have undoubtedly contributed to giving us tranquility and to making us a more law-abiding people. Uncontrolled and uncontrolable liberty is an enemy to domestic peace. We cannot close our eyes to the fact that some of the country's greatest problems are crimes committed by the youth, too many of school age. School discipline, like parental discipline, is an integral and important part of training our children to be good citizens - to be better citizens. Here a very small number of students have crisply and summarily refused to obey a school order designed to give pupils who want to learn the opportunity to do so. One does not need to be a prophet or the son of a prophet to know that after the Court's holding today that some students in Iowa schools and indeed in all schools will be ready, able, and willing to defy their teachers on practically all orders. This is the more unfortunate for the schools since groups of students all over the land are already running loose, conducting break-ins, sit-ins, lie-ins, and smash-ins. Many of these student groups, as is all to familiar to all who read the newspapers and watch the television news programs, have already engaged in rioting, property seizures and destruction. They have picketed schools to force students not to cross their picket lines and have too often violently attacked earnest but frightened students who wanted an education that the picketers did not want them to get. Students engaged in such activities are apparently confident that they know far more about how to operate public school systems than do their parents, teachers, and elected school officials. It is no answer to say that the particular students here have not yet reached such high points in their demands to attend classes in order to exercise their political pressures. Turned loose with law suits for damages and injunctions against their teachers like they are here, it is nothing but wishful thinking to imagine that young, immature students will not soon believe it is their right to control the schools rather than the right of the States that collect the taxes to hire the teachers for the benefit of the pupils. This case, therefore, wholly without constitutional reasons in my judgment, subjects all the public schools in the country to the whims and caprices of their loudest-mouthed, but maybe not their brightest, students. I, for one, am not fully persuaged that school pupils are wise enough, even with this Court's

> expert help from Washington, to run the 23,390 public school systems in our 50 states. I wish, therefore, wholly to disclaim any purpose on my part, to held that the Federal Constitution compels the teachers, parents, and elected school officials to surrender control of the American public school system to public school students. I dissent.

The concept of student rights is currently being challenged and is undergoing testing in the courts. Questions involving student justice, punishment, discipline, suspensions, expulsions, fraternity membership of pupils, status of married pupils, after school hour regulations, use of automobiles, lunch time procedures, compulsory attendance, right to attend school, liability of school district, school board members and teachers for student damages, transportation and curriculum problems as related to students, are areas which are subject to legal challenge and are listed in a recent Manual of Student Rights <u>The Law of the Student</u> by Charles M. Michen.

Another recent publication entitled <u>The Law and After-Hours Use of School Facilities</u>, by William J. Smodic also raises significant legal questions concerning the increasing use of school facilities and the interpretation of the law relative to the matter.

These recent developments indicate the need of availability of legal assistance outside the court room to the school administrator. Superintendents and Principals need constant advice on the interpretation of newly enacted school legislation and recent court opinions and their effect on current school policies and regulations. Advice is needed on prompt legal steps necessary for administrators to maintain control of the public schools and

at the same time satisfy all constitutional standards.

Finally, let me summarize three or four important basic musts for all school boards relative to legal services for your school district:

1. Secure a competent and qualified school attorney with compensation comparable for the best professional service available.
2. Require the attendance and participation of the school attorney at all deliberations and meetings of the school board.
3. Provide the services of the attorney to the Superintendent and administrators of your district to prevent unnecessary legal involvement and for the purpose of assisting them to comply with legal requirements. This provision is probably the most important legal service which school boards currently can provide to protect the district from unnecessary legal suits.
4. Follow the advice of your friend, the school attorney, and accept his counsel in all phases of the school program and business, thus avoiding pitfalls, headaches, and disruptions for your school system.

# # #